

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

LUCIA MAR UNIFIED SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N2006080857

DECISION

John A. Thawley, Administrative Law Judge (ALJ), Office of Administrative Hearings, Special Education Division (OAH), State of California, heard this matter on November 28-30, 2006, in Arroyo Grande, California.

Brad Bailey, Advocate, represented Petitioner (Student). Student's Mother and Grandmother attended the hearing.

Peter Sansom, Attorney at Law, represented Respondent Lucia Mar Unified School District (District). Donald Dennison, District Director of Pupil Personnel Services, attended the hearing.

Student's due process hearing request was filed on August 25, 2006. A continuance was granted on October 16, 2006. Oral and documentary evidence were received. The record closed and the matter was submitted on November 30, 2006.

ISSUES

1. Did the District fail to offer Student a free, appropriate public education (FAPE) by not developing adequate goals and objectives to meet Student's unique needs in the areas of reading, writing, and mathematics (math), in the

individualized education plans (IEPs) dated February 1, 2006, May 11, 2006, July 5, 2006, and August 18, 2006?

2. Did the District fail to offer Student a FAPE by offering the High Point reading program in the May, July, and August IEPs?¹
3. Did the District commit procedural violations of Student's right to a FAPE at the four IEP team meetings by failing to:
 - A. provide Mother with a copy of assessments;
 - B. inform Mother of proposed District assessments;
 - C. provide Mother with a copy of District curriculum, resources, and materials for Student's reading program; and
 - D. allow Mother to meaningfully participate in the IEP team process?
4. As a remedy, Student seeks a District-funded assessment by the Lindamood-Bell Learning Center in the areas of reading, writing, and math; tutoring from the Lindamood-Bell Learning Center in the areas of reading, writing, and math; transportation costs; a Lindamood-Bell vocational assessment; and a transition plan with job and life skills training from "Work Training Programs" developed by the Lindamood-Bell Learning Center.

PARTIES' CONTENTIONS

Student contends that: (1) the District's goals and objectives were inadequate; (2) based on Student's unique needs in the areas of reading and writing, the District should have added goals in the skill areas of phonics, phonemic awareness, and word attack; (3) Sarah Riley, his special day class (SDC) teacher, was not sufficiently trained to provide instruction to Student that would constitute a FAPE; and (4) the District's procedural failures prevented his Mother from meaningfully participating in the IEP process. Student also notes that this is the first year that the District is offering the High Point reading program, which makes it too "experimental" to provide academic benefit to Student, who only has one and a half school years before the end of high school.

District argues that: (1) the goals and objectives adequately addressed Student's unique needs in the areas of reading, writing, and math; (2) alternatively, Student's unique needs were being met by the goal-oriented classroom instruction, and the goals and

¹ This issue originally cited all four of the IEP meetings. However, the February IEP does not refer to the High Point reading program; evidence adduced at the hearing indicated that the District adopted the High Point reading program beginning in the 2006-2007 school year. This issue statement has been amended accordingly.

objectives were never implemented because Mother did not consent to them; (3) the High Point reading program is specifically designed for older pupils with reading difficulties, like Student; and (4) Mother and Mr. Bailey were allowed to meaningfully participate in the IEP team meetings. The District asserts that it provided, to Mother and Student's advocate, a list of proposed District assessments, to which Mother consented, and a copy of the assessment results, and it offered to provide samples of the curriculum, resources, and materials from Student's reading program.

FACTUAL FINDINGS

1. Student was born August 17, 1990, and lives within the District's boundaries. He was found eligible for special education and related services in pre-school due to a language delay, and is currently eligible due to a specific learning disability. He currently attends a SDC at Arroyo Grande High School.

Student's Unique Needs as of February 2006

2. A school district must provide a FAPE that is designed to meet a student's unique needs and is reasonably calculated to provide some educational benefit.

3. The parties do not dispute that Student is an enthusiastic, hard-working pupil who has a specific learning disability in the areas of reading, writing, and math. Rather, the parties dispute the severity of the learning disability, and the appropriate instruction to provide educational benefit to Student.

4. The February 2006 IEP was an annual IEP. Therefore, no additional assessments were conducted. Instead, District's knowledge of Student's unique needs was based on previous assessments, as well as the observations of Ms. Riley, Student's teacher.

5. When Ms. Riley began teaching Student in January 2006, she knew that he needed special instruction, because she had seen samples of his work, had informally observed him in the classroom, and had read his IEP. By February 2006, she had observed that it was very difficult for Student to consistently write complete sentences. She was working with Student on phonics and word attack skills about four to five times per week – teaching him how to break words down into syllables, look at the coordination between the sounds and the syllables, and then read the words. She was also providing instruction in reading comprehension to Student, because she saw that it was very difficult for him.

6. Adrian Dickinson taught Student's math class during the 2005-2006 school year. Ms. Dickinson provided convincing testimony, based on at least eight years of experience with special education students, and based on her education and credentials, including her current work on a master's degree in Special Education. Student needed to practice addition, subtraction, multiplication, and division in a setting more difficult than a basic arithmetic class.

7. As of February 2006, Student had unique needs in the areas of reading comprehension, writing complete sentences, and basic math operations.

February 2006 IEP

8. An IEP must include, in pertinent part, the child's present levels of educational performance, measurable annual goals, the special education related services, and supplementary aids and services to be provided, and a statement of how the child's progress toward the annual goals will be measured.

9. District held an IEP team meeting on February 1, 2006, attended by, among others, Ms. Riley; Mother; Mr. Bailey, Student's educational advocate; Marcia Page, a school psychologist at Student's high school; and Tisha Quam, a District resource specialist. The resulting IEP noted Mother's concern about Student's reading level, specified the special education and related services and supports that were to be provided to Student, and contained three measurable goals, in the areas of reading comprehension, writing sentences, and basic math operations, that included Student's present level of performance (PLOP). Mother did not consent to the goals.

10. Ms. Riley taught language, which included reading and writing, to Student. Goal No. 1, which focused on reading comprehension, required Student, when given orally presented text and reading passages at his instructional level, to restate five details with 80 percent accuracy in two of three opportunities. While the goal did not explicitly mention work in the areas of phonics, phonemic awareness, and word attack skills, Student would be using those skills to meet the annual goal. Therefore, according to Ms. Riley, Student's needs were being met in the classroom, and having an explicit goal for each of these skill areas would have simply "made it official." Goal No. 2 focused on writing; the annual goal required Student, after teacher-led prewriting activities, to compose a single paragraph that included a topic sentence, supporting sentences, and a concluding sentence, with appropriate beginning and ending punctuation, with 75 percent accuracy in two of three opportunities. The instruction and work to meet this goal would not include phonics, phonemic awareness, and word attack. However, Ms. Riley's pre-writing activities included discussing text, using graphic organizers, and taking notes on what happened in a story. Student would have gotten practice on two areas of need: writing a topic sentence and using correct punctuation.

11. Goal No. 3, which focused on math operations, required Student, when given algebraic expressions involving parenthesis and addition, subtraction, multiplication, and/or division, to identify the order of operations to correctly evaluate the expression with 80 percent accuracy in three of four opportunities. According to Ms. Dickinson, Student needed to take algebra in order to take and pass the California High School Exit Examination. Ms. Dickinson teaches a skill each day – either a new skill or a skill that is being reviewed; the repetitive nature leads to "layers of learning." The annual goal was higher than Student's current level of performance.

12. The three goals set forth in the February IEP constituted a FAPE, in that the goals included Student's PLOP, measurable annual goals, the special education, related services, and supplementary aides and services to be provided, as well as a statement of how Student's progress toward the annual goals was to be measured.

Student's Unique Needs as Determined by the Triennial Assessment in March and April 2006

13. District's assessment team decided to conduct an early triennial assessment of Student based on Mother's refusal to consent to the February IEP goals and objectives, and based on subsequent correspondence between the District and Mother, which included a request by Mother for updated information on Student's academic functioning.² District sent a proposed assessment plan to Mother, who signed it and returned it to the District.

14. Ms. Page provided credible, convincing testimony based on her education, credentials, and extensive experience.³ On March 28 and 29, 2006, Ms. Page administered several tests of cognitive function to Student, including the Weschler Intelligence Scale for Children, fourth edition (WISC IV). Student's scores included a 69 on the verbal comprehension subtest, a 68 in working memory, and 59 on processing speed. Student is significantly or severely impaired/delayed in the areas of expressive vocabulary, short-term memory for digits, coding, and symbol search. According to Ms. Page, Student is functioning "far below average," and she would not expect him to be able to read, write, or do math calculations at grade level. Student also has processing deficits in the areas of visual, auditory reception and memory, attention, conceptualization, and expression. Ms. Page recommended, among other things, continued placement in a classroom where all core academic classes were taught through the special education department, a continued focus on direct instruction in reading, specifically, combining phonetic and sight-word reading approaches, assistance with reading comprehension using high-interest reading material, and continued effort to learn more advanced math concepts, paired with use of a calculator and practical, hands-on math activities to understand the algebraic concepts being presented.

15. Dr. Lizbeth Ceasar, Director of Special Projects at California Polytechnic State University (Cal Poly), and a member of the Reading Faculty for Cal Poly and the California State University system, provided credible, convincing testimony based on her education, her extensive experience, and her credentials.⁴ Dr. Ceasar reviewed Student's educational

² Student's triennial assessment had been due by October 13, 2007.

³ Ms. Page has a master's degree in psychology, she holds licenses as a marriage and family therapist and as an educational psychologist, and she has been a school psychologist for about 26 years.

⁴ Dr. Ceasar has a master's degree in English; while earning that degree she met and worked with Charles Lindamood. She also has a Ph.D. in Reading Education, and a doctoral degree in Higher Education. She has spent about 35 years studying the teaching of reading, during which time, among other things, she has taught teachers how to teach reading, including about 20 years of service on the Reading Faculty and 10 years of service as the Director of Special Projects. She also served for four years on the advisory panel that devised the original Reading Instruction Competency Assessment (RICA), which tests a teacher's ability to teach reading, and has a case study component where the teacher reviews an assessment and plans a program that will work for that pupil. Dr. Ceasar

history beginning with pre-school, as well as IEP reports and psychological reports that identified his strengths and weaknesses.

16. Based on Student's WISC IV scores, Dr. Ceasar would not expect Student to be able to read at grade level; he has deficits that, at this point, will not be remedied. Student will have a difficult time reading, given his deficits in word calling, decoding words that he does not use in real life, and short-term memory. Dr. Ceasar also reviewed an Educational Assessment Report prepared by Ms. Quam, who administered the Woodcock-Johnson, Third Edition, Tests of Achievement (WJ III) to Student in late March and early April 2006. Student's scores indicate that, beyond the problems described by Student's WISC IV scores, Student has difficulty with fluency with more complex words that he has not memorized, and his auditory and visual processing deficits will make reading difficult. Dr. Ceasar concluded that Student's WJ III scores were consistent with his WISC IV scores. Student has some strength in the area of comprehension, but his phonological (auditory/visual) processing deficits will frustrate him because he will not be able to do what his intelligence indicates he should be able to do.

17. Student has unique needs, in the form of significant delays, in the areas of expressive vocabulary, short-term memory for digits, coding, and symbol search, as well as processing deficits in the areas of visual, auditory reception and memory, attention, conceptualization, and expression.

The May 2006 IEP, as Updated by the July and August 2006 IEP Addenda

18. The District held an IEP meeting on May 11, 2006, attended by, among others, Ms. Quam, Ms. Page, and Mother. Prior to the May IEP meeting, the District provided Mother with copies of the assessment results, proposed goals and objectives, and her parental rights. The IEP again noted Mother's concern about Student's reading level, and contained eight measurable goals: four in the area of reading (two for decoding, one for comprehension, one for fluency), two for writing (sentence structure and paragraphs), and two for math (word problems and algebra concepts). The PLOP of each of the goals noted, at least in part, the triennial assessment results. The District also held an IEP meeting in July; the discussion consumed so much time that another IEP meeting was scheduled in August. The goals and objectives were updated and adjusted during the July and August meetings. At the August IEP meeting, each of the proposed goals was discussed, to explain how and why the District agreed or disagreed with the suggestions and recommendations of Mr. Bailey. The District made several attempts to elicit comments from Mother. Mr. Dennison believed that Mr. Bailey ended the August IEP meeting because he felt that the District was not listening to him, and/or because the District was not adequately addressing his concerns and recommendations. Mother did not consent to the goals, at least in part due to concerns about the mastery level of some of the goals.

was awarded the U.S. President's Award for America Reads in 1998, the Cal Poly President's Service Award for Reading Tutor Training in 2000, and the California Legislature Assembly Recognition Award for Academic Preparation in 2003.

19. Ms. Riley would have been responsible for implementing the five goals related to reading and writing. The goals were appropriate because each worked on areas with which Student had difficulty, and each would provide Student with opportunities to demonstrate his progress. Goal No. 1 would provide continual practice reading one-syllable words. Goal No. 2 was similar to goal No. 1, except that the levels of ability were established at a lower level because it was more difficult (two-syllable words, as opposed to one-syllable words). Goal No. 3 would provide Student with different strategies to enhance his learning (such as guided lessons, reading a passage, etc., and she would model the skills for Student, when necessary) in between the opportunities to demonstrate his progress. As to goal No. 4, Ms. Riley would provide Student with direct instruction, and would give him sentences that were missing things (like appropriate beginning capitalization), after which she would track Student's edits of the sentences. As to goal No. 5, Ms. Riley would give Student models of what was expected in a factual paragraph, or do an outline of a paragraph, so that Student could see and hear what was expected. Ms. Riley would save the pre-writing activities, outlines, and writing samples that Student completed. As to goal No. 8, Ms. Riley would give Student three opportunities per year to demonstrate his progress using benchmark reading passages that she had previously provided to him. She would also give Student the opportunity, during the week, to read different portions of the same grade-level passages, to ensure that he was properly tracking the letters and words. She could chart his progress on a graph. Ms. Riley would measure Student's progress as to each of the goals by grading his work and maintaining an assessment folder. She would share the results with Student's mother, upon request, at meetings after school, parent-teacher conferences, or IEP meetings.

20. Ms. Dickinson would have been responsible for implementing the math goals for the remainder of the 2005-2006 school year. The use of word problems and a calculator were appropriate, because both approximated real-life situations. Both of the math goals addressed Student's unique needs because he had some difficulty with the math operations. In addition, goal No. 7, math algebra concepts, was somewhat representative and comprehensive, in that Student would learn more about math operations, and also learn some thinking processes (the order of operations, as well as the use of a calculator). The annual goal was higher than Student's current level of performance. Ms. Dickinson would have tracked progress by watching Student work, grading his assignments, tracking the grades in a portfolio (which she maintained for each pupil), and providing the grades to Mother.

21. Michael Rinehart would have been responsible for implementing the math goals for the 2006-2007 school year. He has taught reading before, and "loves" it, so he knew how to help Student break the words (in word problems) into "chunks" to be able to understand the words. Mr. Rinehart agreed with Ms. Dickinson that the use of word problems and a calculator were appropriate, because both approximated real-life situations. Both of the math goals addressed Student's unique needs because he had some difficulty with knowing the proper order of math operations. In addition, goal No. 7, math algebra concepts, was an appropriate goal because knowing algebra concepts would be a good addition to Student's current math skills. Mr. Rinehart uses a warm-up activity each day, as well as other class activities, to teach these concepts. He also has charts in his classroom to

assist the pupils; he would have tracked progress by creating an assessment. He would share Student's grades with Mother via a phone call, or he would share them with Ms. Riley, Student's case manager. Mr. Rinehart would have added multiplication and division to the list of math operations in goal No. 6.

22. The eight goals set forth in the May IEP, and updated or changed in the July and August IEP meetings, constituted a FAPE, in that the goals included Student's PLOP, measurable annual goals, the special education, related services, and supplementary aides and supports to be provided, as well as a statement of how Student's progress toward the annual goals was to be measured.

The High Point reading program

23. A school district must provide a FAPE that is designed to meet a student's unique needs and is reasonably calculated to provide some educational benefit.

24. The District offered Student the High Point reading program. The decoding portion of the program includes work in word recognition skills/strategies (phonics and phonemic awareness) and fluency skills/strategies (automaticity, accuracy, prosody, and high-frequency words). The comprehension portion of the program includes work in academic language (background knowledge and vocabulary) and comprehension strategies (comprehension monitoring and cognitive strategies).

25. Both Dr. Ceasar and Ms. Riley established that the High Point reading program was specifically designed for older pupils like Student, who have had reading instruction and have some comprehension skills, but who continue to struggle with the decoding portion of reading. Also, the High Point reading program has a comprehensive, multi-sensory approach, which Student needs, in that it uses visual tools, including graphic organizers and texts with many pictures, gives pupils the opportunity to manipulate words in a hands-on way that includes writing, and, for auditory learners, the pupils hear stories. The program uses topics that are practical and of interest to older pupils like Student. For example, a writing activity was to interview someone about how they got to their present position; this allowed Student to practice his speaking, listening, and writing skills. Student was interested; he enjoyed that particular unit and learning about different jobs, and he shared his potential future job interests. The program is also designed to move pupils along by building on their skills. For example, when Student mastered reading fluency at his current second-grade level, Ms. Riley would move him on to third-grade level reading material. Dr. Caesar established that High Point is a state-of-the-art reading program that would help Student learn long-term skills that will help him in life, specifically, by using his strengths in oral language and problem-solving skills while minimizing his weaknesses (in phonological and other areas, which he will have for all of his life). According to Dr. Caesar, the High Point reading program is the very best that can be offered.

26. Ms. Riley established that Student has done “excellent” work in the High Point reading program, as evidenced by the fact that he has scored over 90 percent on the tests to assess his reading and spelling of high-frequency words. Student has improved on reading fluency; he is in a small group where he practices every day. Student was successful on the first assessment of reading comprehension, which required him to re-state three things that happened in a story, in order. Student appears to be motivated. He volunteers to practice reading aloud and answer questions, he interacts well with the other pupils, he helps other pupils in his small group, and he works on a task until it is finished.

27. Student contends that Ms. Riley was not adequately trained to provide instruction to Student that constituted a FAPE. However, Ms. Riley believed that she could implement goals and objectives, and her training, including the fact that she passed the Reading Instruction Competency Assessment, supports her belief. Ms. Riley also received assistance and support from Ms. Page, Ms. Quam, and others. For example, Ms. Quam, who spent time in Ms. Riley’s classroom while she was teaching, answered her questions regarding the selection of materials that would be appropriate to the pupils and the selection of assessments to pinpoint particular pupil difficulties, and provided or helped in the development of an assessment binder to pinpoint the strengths and weaknesses of particular pupils. Ms. Riley was “extremely comfortable” asking questions of them, and they were “always” there to help her. Ms. Riley was appropriately trained and supported to provide instruction to Student that constituted a FAPE.

28. In September, Student was assessed at the Lindamood-Bell Clinic. At the hearing, Nikki Jakins, the Clinic Director, testified regarding Student’s unique needs in the areas of reading, writing, and math. However, her recommendation of 240 to 300 hours of tutoring at the Lindamood-Bell Clinic was not credible for several reasons. First, as she admitted, she conducted her assessments in a vacuum, because she did not review Student’s educational history and records. Second, Ms. Jakins was not familiar with the High Point reading program, so she did not know whether it was appropriate for Student, nor could she compare it to the Lindamood-Bell Clinic program(s). Third, as established by Dr. Ceasar, the Lindamood-Bell program was not appropriate for Student, because it was directed at young readers (kindergarten through third grade), or for older students who had not received instruction in reading when they were young. Student had instruction in reading when he was younger, so it would not help him to work on kindergarten and first-grade skills in the Lindamood-Bell Clinic program.

29. The High Point reading program constitutes a FAPE, because it is designed to meet Student’s unique needs and reasonably calculated to provide some educational benefit.

Alleged Procedural Violations

30. A district must provide the parent of a disabled child a copy of any proposed assessment plan, as well as a copy of any assessment report. A district must also provide the parent of a disabled child the opportunity to participate in meetings with respect to the identification, assessment, educational placement and provision of a FAPE to the child.

31. Student alleged that Mother was not informed of the assessments proposed by the District, and was not given copies of the assessment results. However, at the hearing Student presented no evidence to support these allegations. Therefore, Student failed to meet his burden of proof as to these allegations. Furthermore, Mr. Dennison established that the District sent a copy of the proposed assessment plan to Mother. Mother signed the plan and returned it to the District, which allowed the early triennial assessment of Student to proceed in March and April 2006. After Ms. Page and Ms. Quam completed their assessments, but before the May IEP meeting, the District sent Mother a copy of the assessment reports and a copy of proposed goals and objectives for Student. Mother initialed the IEP to indicate that she had received and reviewed the assessment reports. On May 22, 2006, 11 days after the May IEP meeting, the District sent Mother a copy of the IEP, and asked for Mother's consent.

32. Student essentially asserted that the IEPs were pre-determined. Mother testified that she did not receive a copy of the IEP at the start of the February IEP meeting, and the copy admitted into evidence did not indicate that it was a "draft" or working document. However, the District's usual practice was to prepare a proposed IEP prior to the IEP meeting, particularly since the IEP is a computer-generated document. The fact that the document is a proposed IEP that can be modified is mentioned during the IEP meeting. Ms. Page could not recall whether she gave Mother a copy of the IEP at the start of the meeting. Ms. Riley believed that Mother or Mr. Bradley was highlighting or writing on a copy of the IEP. Any copies of the IEP that were distributed at the meeting would have been collected and destroyed, so that the final IEP document was a clean copy.

33. Mother also testified that she did not feel as though she had been able to participate or help develop any of the IEPs. Mother's testimony was very soft-spoken and hesitant; she admitted that she did not understand and got "really confused" with "that stuff." Mother admitted that she could have, and did, ask questions at the IEP meetings. Mr. Bailey accompanied Mother to three of the four IEP meetings. Mother acknowledged that Mr. Bailey asked questions, that the District responded to Mr. Bailey's questions, and that there was discussion between Mr. Bailey and other members of the IEP team regarding Mr. Bailey's questions. Mother conceded that, at the July IEP meeting, the discussion was so lengthy that the IEP meeting had to be continued to the date in August.

34. Student contends he has a right to a copy of the District's reading curriculum, resources, and materials, but Student provided no legal basis for this assertion. Mr. Dennison attended an IEP meeting where Student made a "blanket-type" request for a copy of the District's curriculum. The issue was discussed at the August IEP meeting. Student wanted access to, and the ability to copy, a wide variety of materials used in Student's reading program, including the reading materials and assessments that were to be conducted. Neither federal nor state special education law provides parents with a right to such blanket access to school materials and texts. The District did not believe it was reasonable or possible to provide to Student every text or material that was going to be used in Student's classes, because Student's teachers have discretion as to the materials they use,

which may vary depending on Student's abilities and motivation. Instead, the District offered to provide to Student representative samples of the texts being used in the classroom and the work that he completed. The District also invited Mother and/or Mr. Bailey to observe Student in his classroom. Mother and/or Mr. Bailey did not avail themselves of the District's offer of representative samples or of the District's invitation to observe Student.

APPLICABLE LAW PRINCIPLES

1. Student has the burden of proving the essential elements of his special education claims. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed 2d 387].)

2. A child with a disability has the right to a FAPE. (20 U.S.C. §1412(a)(1)(A);⁵ Ed. Code, § 56000.) A FAPE is defined in pertinent part as special education and related services that are provided at public expense and under public supervision and direction, that meet the State's educational standards, and that conform to the student's IEP. (§ 1401(9); Cal. Code Regs., tit. 5, § 3001, subd. (o).) "Special education" is defined in pertinent part as specially designed instruction and related services, at no cost to parents, to meet the unique needs of a child with a disability. (§ 1401(29); Ed. Code, § 56031.) "Related services" or DIS means transportation and other developmental, corrective and supportive services as may be required to assist the child to benefit from special education. (§ 1401(22); Ed. Code § 56363, subd. (a).)

3. There are two parts to the legal analysis in suits brought pursuant to the IDEA. First, the court must determine whether the school system has complied with the procedures set forth in the IDEA. (*Bd. of Ed. of the Hendrick Hudson Sch. Dist. v. Rowley* (1982) 458 U.S. 176, 200 [*Rowley*].) Second, the court must assess whether the IEP developed through those procedures was designed to meet the child's unique needs, reasonably calculated to enable the child to receive educational benefit, and comported with the child's IEP. (*Id.* at pp. 206-207.)

4. In *Rowley*, the United States Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. But procedural violations constitute a denial of FAPE only if the violations caused a loss of educational opportunity to the student or significantly infringed on the parents' right to participate in the IEP process. (*Rowley*, *supra*, 458 U.S. at pp. 206-207; *M.L. v. Federal Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634, 646; *MM v. Sch. Dist. of Greenville County* (4th Cir. 2002) 303 F.3d 523, 534; *Amanda J. v. Clark County Sch. Dist.* (9th Cir. 2001) 267 F. 3d 877, 892.)

5. Parents have a right to review the District's proposed assessment plan before deciding whether to consent to the plan, and the right to receive a copy of the report of any assessment performed on the child. (Govt. Code §§ 56043, subds. (a) & (b); 56329(a).)

⁵ All statutory references are to the Individuals with Disabilities Education Act (IDEA), Title 20 of the United State Code, unless specifically noted otherwise.

Parents also have the right to examine, and to receive a copy of, “all school records of the child.” (Govt. Code § 56504; see also 34 C.F.R. § 300.501(a) [“The parents of a child with a disability must be afforded . . . an opportunity to inspect and review all education records with respect to (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child.”].)

6. Another procedural requirement, found in both State and federal law, requires that the parents of a child with a disability be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement and provision of a FAPE to the child. (Ed. Code §§ 56304, 56342.5; 34 C.F.R. § 300.501(b).) Thus, parents are required members of the IEP team. (§ 1414(d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1); Ed. Code § 56341, subd. (b)(1).) Education Code section 56341.1 also requires the IEP team to consider, among other matters, the strengths of the pupil and the results of the initial assessment or most recent assessment of the pupil. The IEP team must consider the concerns of the parents throughout the IEP process. (§ 1414(c)(1)(B), (d)(3)(A)(i), (d)(4)(A)(ii)(III); 34 C.F.R. §§ 300.305(a)(i), 300.324(a)(1)(ii), (b)(1)(ii)(C); Ed. Code § 56341.1, subds. (a)(1), (d)(3) & (e).)

7. An IEP must include, among other things, the child’s present levels of educational performance, measurable annual goals, the special education, related services, and supplementary aids and services to be provided, as well as a statement of how the child’s progress toward the annual goals will be measured. (§ 1414(d)(1)(A)(i), (ii), (iii) and (vii)(I); 34 C.F.R. § 300.320; Ed. Code, § 56345, subds. (a)(1), (2), (3) & (9).) Measurable annual goals enable the student, parents, and educators to monitor progress and to revise the IEP consistent with the student’s instructional needs. (Appen. A to 34 C.F.R. §300, Notice of Interpretation, 64 Fed. Reg. 12471 (Mar. 12, 1999).) While the required elements of the IEP further important policies, “rigid ‘adherence to the laundry list of items [required in the IEP]’ is not paramount.” (*W.G. v. Bd. Of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484, citing *Doe v. Defendant I* (6th Cir. 1990) 898 F.2d 1186, 1190-1191.) Because “[a]n IEP is a snapshot, not a retrospective” (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149), it is not to be evaluated in hindsight. Rather, an IEP must be evaluated in light of the information available, and what was objectively reasonable, at the time the IEP was developed.

8. School officials and staff do not predetermine an IEP simply by meeting to review, discuss, and take notes regarding a child's evaluation and programming in advance of an IEP meeting, so long as they “come to the meeting with suggestions and open minds, not a required course of action.” (*W.G., supra*, 960 F.2d at p. 1484; compare *N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693-695, fn. 3; see also *Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 994, with *Deal v. Hamilton County Bd. of Ed.* (6th Cir. 2005) 392 F.3d 840, 858; see also *Ms. S. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1131, citing *W.G., supra*, 960 F.2d at p. 1484.) A parent has meaningfully participated in the development of an IEP when he is informed of his child’s problems, attends the IEP meeting, expresses his disagreement regarding the IEP team’s conclusions, and requests revisions in the IEP. (*N.L., supra*, 315 F.3d at p. 693; *Fuhrmann v. East*

Hanover Bd. of Educ. (3rd Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) While the IEP team should work toward reaching a consensus, the school district has the ultimate responsibility to determine that the IEP offers a FAPE. (App. A to 34 C.F.R. § 300, Notice of Interpretation, 64 Fed. Reg. 12473 (Mar. 12, 1999).)

9. As noted in Applicable Law Principle Number 3, the second prong of the *Rowley* test analyzes substantive appropriateness, specifically, the level of instruction and services that must be provided to a student with disabilities to satisfy the IDEA's requirements. The *Rowley* Court determined that a student's IEP must be designed to meet the student's unique needs, be reasonably calculated to provide the student with some educational benefit, and comport with the student's IEP. (*Rowley, supra*, 458 U.S. at pp. 188-189, 200-201.) To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) An IEP need not conform to a parent's wishes in order to be sufficient or appropriate. (*Shaw v. Dist. of Columbia* (D.D.C. 2002) 238 F.Supp.2d 127, 139 [IDEA does not provide for an "education . . . designed according to the parent's desires"], citing *Rowley, supra*, 458 U.S. at p. 207.) Nor does the IDEA require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley, supra*, 458 U.S. at pp. 198-200.) Rather, the Court held that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 200.) Hence, if the school district's program met the substantive *Rowley* factors, then that district provided a FAPE, even if petitioner's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit. (*Gregory K., supra*, 811 F.2d at p. 1314.)

10. Moreover, the *Rowley* opinion established that, as long as a school district provides an appropriate education, methodology is left up to the district's discretion. (*Rowley, supra*, 458 U.S. at p. 208.) "The *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods." (*T.B. v. Warwick Sch. Comm.* (1st Cir. 2004) 361 F.3d 80, 84; citing *Roland M., supra*, 910 F.2d at pp. 992-993, and *Rowley, supra*, 458 U.S. at pp. 207-208; *Adams, supra*, 195 F.3d at pp. 1146-1150.)

LEGAL CONCLUSIONS

Issue 1: Did the District fail to offer Student a free, appropriate public education (FAPE) by not developing adequate goals and objectives, to meet Student's unique needs in the areas of reading, writing, and math, in the IEPs dated February 1, 2006, May 11, 2006, July 5, 2006, and August 18, 2006 ?

11. Based on Factual Findings 2 through 22 and 28, and Applicable Law Principles 1 through 3, 7, and 8, during the February, May, July, and August IEP meetings, the District offered Student a FAPE by developing adequate goals and objectives, in that the goals and objectives were measurable, designed to meet Student's unique needs in the areas of reading, writing, and math, and designed to provide some educational benefit.

Issue 2: Did the District fail to offer Student a FAPE by offering the High Point reading program in the May IEP, updated in July and August?

12. Based on Factual Findings 23 through 29, and Applicable Law Principles 1 through 3, 9, and 10, the District offered Student a FAPE by offering the High Point reading program. The High Point reading program was specifically designed for older pupils like Student who have had reading instruction but who still have difficulty reading; hence, it would meet Student's unique needs and provide some educational benefit.

Issue 3: Did the District commit procedural violations of Student's right to a FAPE at the February, May, July, and August IEP team meetings by failing to provide Mother with a copy of assessment, inform Mother of proposed District assessments, provide Mother with a copy of District curriculum, resources, and materials for Student's reading program, and by failing to allow Mother to meaningfully participate in the IEP team meetings?

13. Based on Factual Findings 30 through 34, and Applicable Law Principles 1 through 6, the District did not commit procedural violations of Student's right to a FAPE because the District informed Mother of the District's proposed assessment plan, obtained Mother's consent to the proposed assessment plan, and then provided Mother with a copy of the triennial assessment reports.

14. Based on Factual Findings 30 through 34, and Applicable Law Principles 1 through 6, the District did not commit a procedural violation of Student's right to a FAPE by failing to provide Mother with a copy of the District curriculum, resources, and materials for Student's reading program. Student does not have a right to all of these materials. The District properly offered to provide Mother with representative samples of the texts being used in Student's class, and copies of the work that Student completed.

15. Based on Factual Findings 30 through 34, and Applicable Law Principles 1 through 6, the District did not commit a procedural violation of Student's right to a FAPE because the District did not prevent Mother from meaningfully participating in the IEP team meetings, in that Mother attended the four IEP team meetings (at least one of which was scheduled as a follow-up meeting because the discussion was too lengthy for one IEP team meeting), Mr. Bailey attended three of the four IEP meetings, Mother and/or Mr. Bailey asked questions, and the District responded to those questions.

ORDER

The District's offers, in the IEPs dated February 1, 2006, and May 11, 2006, as updated during the IEP team meetings of July 5, 2006, and August 17, 2006, which included the High Point reading program, constituted a FAPE. The District did not commit procedural violations of Student's right to a FAPE.

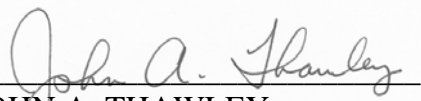
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. The District prevailed on all issues in this matter.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: December 20, 2006



JOHN A. THAWLEY
Administrative Law Judge
Special Education Division
Office of Administrative Hearings